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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

|  |   |                       |
|--|---|-----------------------|
| In the Matter of                       | ) |                       |
|  | ) |                       |
| Implementation of Section 309(j)       | ) | MM Docket No. 97-234  |
| of the Communications Act              | ) |                       |
| -- Competitive Bidding for Commercial  | ) |                       |
| Broadcast and Instructional Television | ) |                       |
| Fixed Service Licenses                 | ) |                       |
|  | ) |                       |
| Reexamination of the Policy            | ) | GC Docket No. 92-52   |
| Statement on Comparative               | ) |                       |
| Broadcast Hearings                     | ) |                       |
|  | ) |                       |
| Proposals to Reform the Commission's   | ) | GEN Docket No. 90-264 |
| Comparative Hearing Process to         | ) |                       |
| Expedite the Resolution of Cases       | ) |                       |

To: The Commission

**REPLY COMMENTS OF THE  
COMMUNITY TELECOMMUNICATIONS NETWORK**

The Community Telecommunications Network ("CTN") hereby replies to various of the Comments filed in response to the above-captioned Notice of Proposed Rulemaking ("NPRM").<sup>1/</sup>

**I. INTEREST OF CTN**

CTN is a nonprofit corporation founded in 1989 by the Instructional Television Fixed Service ("ITFS") licensees in the Detroit, Michigan, area listed

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<sup>1/</sup> In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, FCC 97-397, released November 26, 1997.

below.<sup>2/</sup> CTN was created to coordinate the relevant activities of these licensees, including the construction, operation and maintenance of colocated transmission and production facilities. In addition, CTN acts as the interface point between these licensees and the Detroit area wireless cable operator; CTN leases excess capacity from its individual members and subleases capacity to the wireless cable operator.

Some members of CTN have operated extensive ITFS systems since well before the Commission's 1983 effort to reinvigorate the MDS industry by making new channel capacity available (both through the reallocation of the E and F Groups and through permitting the leasing of excess ITFS channel capacity).<sup>3/</sup> Indeed, even the most recently established systems that operate under the CTN umbrella were licensed at least five years prior to the establishment of a relationship with a wireless cable operator. In short, the scope of the Detroit area's ITFS operations (including the number and geographic distribution of receive sites, the number of students served, and the diversity of courses and programs offered) is quite extensive, and demonstrates a commitment to the use of television for instructional purposes that predates and transcends more recent attempts to facilitate the use of these channels for commercial purposes.

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<sup>2/</sup> CTN's members (and their call signs) are as follows: Detroit Educational Television Foundation (WHR915); Detroit Public Schools (KTB98); Macomb Intermediate School District (WHR914); Oakland Intermediate School District (WHR508); Wayne County Regional Educational Service Agency (WHR916); and Wayne State University (WAK57).

<sup>3/</sup> Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in Regard to Frequency Allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service, 94 F.C.C.2d 1203 (1983) ("1983 Report and Order").

**II. THERE IS NO STATUTORY BASIS WHATSOEVER FOR SUBJECTING MUTUALLY EXCLUSIVE ITFS APPLICANTS TO AUCTIONS NOR ANY RATIONAL PUBLIC POLICY BASIS FOR DOING SO.**

With one exception, the commentators that address the issue are unanimous that there is no legal basis or policy justification for imposing auctions on mutually exclusive ITFS applicants.<sup>4/</sup> CTN fully supports this conclusion. Put simply, had Congress intended to require financially strapped educational institutions -- usually financed by state or local tax revenues of one form or another -- to contribute those education tax dollars to the U.S. Treasury in order to receive a heretofore free ITFS license, it would have said so rather explicitly. It is patently obvious that it did not, either directly in the statute or by reference in the legislative history.

Moreover, there is no independent policy reason for doing so. The record in this proceeding is devoid of any public interest rationale for so burdening educational institutions. The comparative criteria specified by 47 C.F.R. §74.913 for resolving instances of mutual exclusivity are fair and adequate for resolving cases of mutual exclusivity. The existing process places no undue burden on the applicants and can be rationally and expeditiously applied by the Commission.<sup>5/</sup>

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<sup>4/</sup> See, e.g., Comments of ITFS Parties (Arizona Board of Regents, et al.); Comments of Indiana Higher Education Telecommunications System; Comments of the National ITFS Association; Joint Comments of the Board of Education of the City of Atlanta, et al.; Joint Comments of the Board of Trustees of Community Technical Colleges, et al.; Comments of the Corporation for Public Broadcasting; Comments of the School District of Palm Beach County, Florida; Comments of the Wireless Cable Association International, Inc.; Comments of BellSouth Corporation, et al.

<sup>5/</sup> The Hispanic Informational Telecommunications Network ("HITN") appears to be the sole party favoring auctions for ITFS applicants. It is, however, unable to make a remotely credible case for its position, either as to whether  
(continued...)

### CONCLUSION

As a result of the foregoing, and for the reasons set forth by the parties identified in n.4, supra, the Commission should not subject ITFS licensees to the auction process.

Respectfully submitted,

COMMUNITY TELECOMMUNICATIONS NETWORK

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<sup>5/</sup>

(...continued)

Section 309(j) mandates such a result or with regard to whether it would represent rational public policy.

It must be recalled that HITN was one of the "national filers" that first emerged in the mid-1980s ITFS "land rush." These parties filed ITFS applications in all major markets, receiving financial backing from several now-defunct wireless cable entrepreneurs. In response to those national filers, the Commission adopted rules to ensure -- as reflected in the existing ITFS comparative factors -- a solid nexus between ITFS licensees and the local educational community. HITN generally opposed these Commission efforts. Thus, it is no surprise that HITN should now be willing to trade the existing system, with its insistence on solid ties to the local educational community and the delivery of real instructional services, for one driven by monetary considerations.